

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q62485

Fabrice DELLA MEA

Appln. No.: 09/749,656

Group Art Unit: 2688

Confirmation No.: 8724

Examiner: Sharad K. RAMPURIA

Filed: December 28, 2000

For: A METHOD OF ESTABLISHING TANDEM FREE OPERATION MODE IN A
CELLULAR MOBILE TELEPHONE NETWORK

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated July 27, 2006. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

The status of the claims remains unchanged as set forth in the Appeal Brief filed on May 15, 2006.

Claims 1-22 are pending in the present application and stand rejected and are the claims on appeal.

Claims 1, 9, 13-14, 19 and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Watanabe et al. (U.S. Patent No. 5,991,642; hereinafter “Watanabe”) in view of Oestreich (U.S. Patent No. 6,349,197; hereinafter “Oestreich”).

Claims 10-12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Watanabe and Oestreich in view of Mayer (U.S. 2003/0195011; hereinafter Mayer).

Claims 20 and 21 have been allowed.

Claims 2-8 and 15-18 have been objected to but would be allowed if rewritten in independent form.



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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Rejection of claims 1, 9, 13-14, 19 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Watanabe in view of Oestreich.
2. Rejection of claims 10-12 under 35 U.S.C. § 103(a) as being unpatentable over Watanabe and Oestreich in view of Mayer.

ARGUMENT

Appellant now responds to certain new points raised by the Examiner in his Answer.

I. The combination of Watanabe and Oestreich does not teach the claimed selection of a common coding mode for each mobile station

Claims 1, 9, 13-14, 19 and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Watanabe et al. (U.S. Patent No. 5,991,642) in view of Oestreich (U.S. Patent No. 6,349,197).

The Examiner concedes that Watanabe does not teach a step of selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell, and cites Oestreich to cure the deficiency. See Office Action of September 13, 2005 at page 4, second paragraph. In particular, the Examiner asserts that Oestreich teaches that the traffic load causes transcoding to change.

In response to Appellant's arguments that the combination of Watanabe and Oestreich does not teach "selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell" the Examiner asserts on page 7 of the Examiner's Answer that Oestreich, col. 4, lines 36-44, discloses a control means SE consists in the detection of interruptions in the TPO transmission or of bottlenecks in the allocation of radio resources. The Examiner further asserts that Oestreich discloses that if changeover is necessary in a half-rate mode, then a narrowband speed coding method SSCV should likewise be selected.

However, the aspects of Oestreich cited by the Examiner merely disclose detecting interruptions in the TPO transmission or of bottlenecks in the allocation of radio resources. There is no teaching or suggestion of selecting a common coding mode. In particular,

Oestreich merely discloses a control means SE detecting interruptions in a TPO transmission or of bottlenecks and selecting a narrowband speech coding method if changeover is necessary. However, there is no teaching or suggestion that a common coding mode is selected for each mobile station based on such information.

II. The combination of Watanabe and Oestreich is not obvious

Appellant submits that the claimed elements are not obvious in view of Watanabe and Oestreich. In particular, Oestreich does not teach or suggest addressing the technical problems as disclosed by the Appellant's invention.

In response to the Appellant's argument that the combination of Oestreich with Watanabe is not obvious, the Examiner generally states that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The Examiner further states Oestreich with Watanabe are in the same field of endeavor and that combining Oestreich with Watanabe would optimize the speech coding scheme.

However, as discussed above, Oestreich does not cure the deficiencies of Watanabe. Oestreich merely discloses that a control means detects interruptions in the TPO transmission; therefore if a changeover is necessary in a half-rate mode, then a narrow band speed coding method SSCV should be selected. Oestreich discloses that only the broadband transmission of speech information occurs with a TFO mode. See col. 4, lines 18-20. Oestreich further discloses, for a given connection, to monitor the transmission possibilities, and depending on this monitoring, to execute if necessary a switchover from the broadband to the narrowband speech

coding method. See col. 2, lines 20-28, or col. 4, lines 27-44; i.e. a switchover from TFO mode to non TFO mode.

An example of such a switchover from the broadband to the narrowband speech coding method is the “bottleneck in the allocation of radio resources” referred to by the Examiner and disclosed at col. 4 lines 38-39. However, this does not teach from the selection of a common coding mode, taking into account the traffic load, as claimed in the present application.

Moreover, as previously indicated, Watanabe discloses the selection of a coding mode according to a coding mode which mobile stations have in common. In particular, a goal of Watanabe is to permit a control station to select a speech coding scheme according to an order of priority. See col. 7, lines 3-12. Assuming *arguendo*, Oestreich teaches the elements as claimed, the combination of Oestreich with Watanabe would not be obvious to one of ordinary skill in the art.

As previously submitted, Watanabe is directed to a mobile communications system which has a control station which selects speech coding schemes for a mobile station. Watanabe discloses a call between a mobile station 11, which can use A or B speech coding schemes, and a mobile station 12, which can only use a B speech coding scheme. A switch 41 accesses a database 51 containing speech coding scheme data of mobile stations 11 and 12 and determines that mobile station 11 can use A or B speech coding schemes and that mobile station 12 can only use a B speech coding scheme. A selection condition that selection is restricted to speech coding scheme B is sent to control station 31 and is further stored in selection condition table 80.

In accordance with the selection condition, control station 31 selects a traffic channel of bit rate β corresponding to speech coding scheme B and notifies the switch 41 of the selected

channel. The switch 41 notifies control station 31 that it should make base station 21 and mobile station 11 start up using speech coding scheme B and also sets up a traffic channel to switch 42.

Based on the foregoing, it is apparent that the selection of a coding mode in Watanabe is based solely on a coding mode that the mobile stations have in common. There is no teaching or suggestion that the selection of a common coding mode takes into account the traffic load in at least one cell. Any suggestion by the Examiner otherwise, is clearly a result of impermissible hindsight upon viewing the Appellant's invention. Moreover, modifying Watanabe to take into account a traffic load in order to select a coding mode, when Watanabe clearly does not teach or suggest taking a traffic load into account, would result in a substantial modification of the principal of operation of Watanabe (MPEP 2143.01(V)) which is contrary to establishing a *prima facie* basis for obviousness.

For at least the above reasons and those set forth in the Appeal Brief, claim 1 and its dependent claims should be deemed allowable. To the extent claim 22 recites similar elements, claim 22 should be deemed allowable for at least the same reasons.

III. Mayer does not cure the deficiencies of Watanabe and Oestreich

Claims 10-12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Watanabe and Oestreich in view of Mayer. Claims 10-12 should be deemed allowable by virtue of their dependency to claim 1 for the reasons set forth above. Moreover, Mayer does not cure the deficiencies of Watanabe and Oestreich.

For at least the above reasons and those set forth in the Appeal Brief, claims 10-12 should be deemed allowable.

Therefore, for at least these reasons and those set forth in the Appeal Brief, claims 1-22 should be deemed allowable.

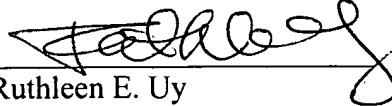
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CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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23373
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Date: September 27, 2006